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Current Topics.

Legal Aid for Soldiers.

AN article which appeared in *The Times* a week ago dealt, *inter alia*, with the aid furnished to soldiers by the legal section of the Welfare Branch of the Aldershot Command. The calling-up of age groups for service has, it is intimated, inevitably resulted in the men being confronted with financial and legal difficulties. Tribute is paid to the valuable work which has been done in helping to solve such questions, and it is said that since last November some 500 cases have been handled in the Aldershot Command. In each instance full investigation of the facts has been made and advice has been given to the man through his Commanding Officer as to the appropriate line of action. Correspondence with interested parties has been conducted, and wherever work of a legal nature has been required the section has found out the facts, prepared a statement of the position and obtained the voluntary services of a solicitor in the Command or elsewhere. Efforts are made to see that men receive the maximum assistance available from the War Service Grants Advisory Committee, which is authorised to recommend supplemental payment where it is shown that financial hardship has been caused by military service, and attention is drawn in this connection to the problems arising out of commitments entered into with building societies, hire-purchase firms and landlords. In cases where the maximum which can be allocated by the committee (£2 a week) provides no solution to the problem, advice has been given which has often, in the words of the article, "enabled the soldier to get on with his training and fighting without his energies being sapped by fears of bankruptcy and financial disaster at home." In the case of matrimonial troubles, arrangements are made for a visit to the parties concerned and a frank talk. Several reconciliations have, it is said, been effected. The article concludes with the statement that in all matters where legal work has been necessary it has been found possible to secure the services of a solicitor free of cost from the Aldershot Command.

Defence Regulations: Invalid Provision.

THE Minister of Supply was recently asked in the House of Commons in how many instances he had purported to authorise persons appointed by him to carry on existing undertakings as agents for the undertakers; whether any persons so appointed had pledged the credit of the undertakers, and whether he intended to indemnify undertakers against consequential liabilties. Readers will remember that such measures were taken under para. 55 (4) of the Defence Regulations, 1939, and that the said paragraph was recently held by BENNETT, J., in *E. H. Jones (Machine Tools), Ltd.* v. *Edward Charles Farrell and Eric William Muirsmith* to exceed the powers conferred by the Emergency Powers (Defence) Act, 1939, on the rule-making authority. In answer to the question, Mr. H. MORRISON said that such action had been taken in respect of eleven undertakings. As regards the last part of the question, it would not, he said, be expected that he should be able to supply information as to the details of the day to day transactions which might have been entered into on behalf of the undertakers. Nor could he make any general statement on the subject, as the position in regard to para. 4 of Regulation 55 of the Defence (General) Regulations was under consideration by the Government. The regulation has since been withdrawn and replaced by another which makes the appointees the agents of the Crown, and not of the undertakers, and substantially restricts the powers of the appointees.

Preservation of the Countryside.

A FEW weeks ago we referred in these columns to the report of the National Trust which indicated the policy which is being pursued by that body in the altered conditions of the present day. Another body whose activities have of necessity been profoundly affected by the war is the Council for the Preservation of Rural England. Particular interest is, therefore, attached to its recent memorandum concerning its policy for the duration of the war. Emphasis is laid upon the importance of conserving and developing the country's agricultural resources and improving the social environment of the rural population, and the council states that it is resolved to direct its policy towards these objectives both in war and peace. So far as agricultural development is concerned, the council's activities are to be concentrated on the safeguarding of all potentially productive land by the permanent restriction or prohibition of building thereon, except where such is urgently required in the national interests. It will co-operate with planning authorities and county councils in their efforts to protect rural areas by agricultural reservations, rural zones and other open space reservations, under the powers of the statutes relating to town and country planning, ribbon development and allotments. Schemes for land drainage, reafforestation, land settlement, and the establishment of co-operative smallholdings and allotments will, it is stated, be encouraged, while the invasion of agricultural areas by industrial undertakings of a sporadic and speculative nature will be resisted. Further, special attention is to be paid to social amenities of the rural population so far as is compatible with the needs of the time. The council will urge the resumption of the building of suitable houses for workers on the land, the release of building materials for this purpose, and the renewal of State aid under the Housing and Housing (Rural Workers) Acts. The retention and provision of playing fields in each rural parish, the protection of public footpaths and bridle tracks, the prevention of the pollution of rivers, lakes and streams, the protection of the coast, and constant vigilance in regard to potential national park areas are cited in the memorandum as among other objects which the organisation will foster.

Trade Debts: Enemy Occupied Countries.

In answer to a question recently asked in the House of Commons as to what steps were being taken to enable firms which had supplied goods to countries now overrun by the enemy to secure compensation, and, in particular, to have cash made available for carrying on their business when it was of national importance, the Chancellor of the Exchequer stated that the Government had decided that the importance of maintaining the export trade made it desirable that assistance should be given from the public funds to those traders in the United Kingdom who were unable to obtain payment of debts in respect of goods from enemy countries or countries occupied by the enemy or treated as occupied under the Trading with the Enemy legislation. That assistance would be limited to cases where the non-payment of the debt could be shown to be prejudicing the export trade, and it would take the form of advances on the security of the debts not exceeding 50 per cent. of the amount of the debt. Sir Kingsley Wood further stated that in consultation with the President of the Board of Trade he had appointed a committee to investigate the various cases and to recommend what amount, if any, should be advanced. The committee would make an announcement as soon as possible on the procedure to be followed by those desiring to make application for advances.

Imprisonment for Debt.

In answer to a question recently asked in the House of Commons concerning the number of persons in England imprisoned for debt, the longest and shortest periods for which such persons were imprisoned, the total period for them all, and the cost to the public funds and to the creditors concerned, Sir John Anderson stated that the last information available was for the year 1938. During that year 3,357 males and sixty-two females were committed to prison from county courts, nearly all of them for failure to comply with an order or judgment to pay a debt. The Home Secretary said that it would not be possible without the expenditure of much time and labour to supply the information asked for in the second and third parts of the question, but he recalled that the maximum period for which a person might be committed to prison in such circumstances was six weeks, though in practice the period of committal seldom exceeded four weeks and might be only a few days. As regards the last part of the question, there was no separate record of the cost of maintenance of debtor prisoners. No part of that cost was borne by the creditors.

The Coal Commission: Loans.

Under s. 26 of the Coal Act, 1938, the Coal Commission is authorised to borrow for the purposes mentioned in s. 27, in accordance with regulations made by the Board of Trade with the approval of the Treasury, sums not exceeding £76,450,000 (or the sum of £66,450,000 payable as compensation in respect of principal coal hereditaments, and £10,000,000). This power is, of course, necessary in order to enable the Commission to finance its operations until it is in full receipt of the rents and royalties under the Act. The Financial Secretary to the Treasury was recently asked in the House of Commons whether it was the intention to raise the money by way of loans to meet the payment of compensation to royalty owners as required by the Act, and, if so, whether he would consider suspending this operation during the war period. In reply, Captain Crookshank intimated that it was intended to raise this money in due course by loan. He was not prepared to take a decision that in no circumstances would the necessary loan or any part of it be issued during the war period, but he said that the questioner might rest assured that it would not be issued until after careful consideration had been given to all the relevant factors, including those involved in connection with the financing of war operations.

Motor Vehicles: Camouflage.

A week ago the Minister of Transport made an order prohibiting from 26th August the use on the highway by an unauthorised person of any vehicle so painted or otherwise treated as to resemble a camouflaged vehicle employed in the service of the Armed Forces of the Crown. The use of any neutral colour, other than greys and khaki adopted by the Services, is advised. Glossy surfaces and bright colours should, of course, be avoided. The *Sunday Times* of 10th August drew attention to a method advocated by the British Industrial Design Group. This involves the car being divided longitudinally for camouflage purposes and the painting of one half to harmonise with urban and of the other half to harmonise with rural surroundings. In the event of an air raid such a vehicle could be drawn up against a hedge so that the colouring for town use is screened, or against a building or wall so that the half intended to harmonise with the country is screened.

Air Raids: Lights on Vehicles.

The Times recently indicated that the Minister of Home Security was anxious to correct what is described as a widespread impression that all lights on vehicles must be extinguished when an air-raid warning is sounded. This, it is said, is not the case. Only headlamps should be extinguished. It is recalled that in certain circumstances the police may order motorists to extinguish their headlamps although air-raid sirens may not have been sounded. Side and tail lamps are, however, never to be extinguished in the hours of darkness so long as the vehicle is on the road, even though an air raid may be in progress. The use of headlamps during air raids is authorised on vehicles engaged on military, police, and civil defence services.

Recent Decisions.

In *Rex* v. *General Commissioners of Income Tax; ex parte Gibbs and Others* (*The Times*, 3rd August), the Court of Appeal (Scott, Clauson and Goddard, L.JJ.) reversed the decision of a Divisional Court of the King's Bench Division, and held that, where four partners in a firm of stock and share brokers took a fifth person into partnership, the four partners did not cease, within r. 9 (1) of the Rules applicable to Cases I and II of Sched. D. to the Income Tax Act, 1918, to carry on the trade in respect of which an assessment to income tax had been made, and had not been succeeded by the firm of five partners. In such circumstances the surveyor had no jurisdiction to certify to the commissioners under the rule, nor could the commissioners adjust the assessment.

In *Marthews, E. W.* v. *Marthews, L. R.* (*The Times*, 7th August), Sir Boyd Merriman, P., granted the petitioner a decree *nisi* of divorce on the ground of his wife's desertion for at least three years preceding the presentation of the petition in May, 1940. A previous petition, filed in January, 1938, had been dismissed by Langton, J., following *Stevenson* v. *Stevenson* [1911] P. 191, on the ground that the filing of a petition by the husband for judicial separation in February, 1937, put an end to the desertion. In *Cohen* v. *Cohen* [1940] A.C. 631, the House of Lords held that the filing of a petition did not in itself put an end to the desertion.

In *Bell Property Trust, Ltd.* v. *Wandsworth Assessment Committee; Same* v. *Hampstead* (*The Times*, 9th August), the Court of Appeal (Scott, Clauson and Goddard, L.JJ.) reversed the decision of a Divisional Court and held that, in ascertaining the rent of a flat for the purpose of arriving at its rateable value, the value of services and amenities provided by the landlords, such as domestic hot water, central heating, and radio relayed from a central station in the building, should be deducted from the inclusive sum paid by the tenant in respect of the occupation of the flat. *Pullen* v. *St. Saviour's Union* [1900] 1 Q.B. 138, which was followed by the Divisional Court with reluctance, overruled.

In *Mosley* v. *Sunday Pictorial Newspapers* (1920), *Ltd.* (*The Times*, 10th August), Bennett, J., dismissed the plaintiff's motion for an injunction to restrain the defendants from selling or distributing copies of a Sunday newspaper published on 4th August alleged to contain untrue and defamatory statements about him. The jurisdiction to grant an interim injunction was only to be exercised in the clearest case where any jury would say that the matter complained of was libellous (see *per* Lord Esher, M.R., in *Coulson* v. *Coulson*, 3 T.L.R. 846), and the present case was not of that character. Nor was there any threat of an intention to repeat the publication.

In *Collier* v. *Sunday Referee Publishing Co., Ltd.* (*The Times*, 10th August), Asquith, J., held that the defendants had committed a breach of a contract to employ the plaintiff as chief sub-editor of a newspaper by selling the paper to another company before the expiration of the contract. Acceptance of salary after the date of the sale did not operate as a waiver of the breach because the measure of damages was, subject to mitigation, the salary of which the plaintiff had been deprived, and he was entitled to accept sums paid as salary on account of the damages owed.

In *Rex* v. *Cobbett* (*The Times*, 13th August) the Court of Criminal Appeal (Humphreys, Oliver and Croom-Johnson, JJ.), in exercise of its statutory powers, substituted a verdict of manslaughter for one of murder, and a sentence of fifteen years' penal servitude for that of death passed on the appellant at the Central Criminal Court by Atkinson, J. The appellant had stabbed a police officer who died on the following day. The court intimated that the learned judge in his summing up had omitted to mention the possibility that if the officer was not at the time acting in the lawful execution of his duty it might be a question whether there was provocation.

Criminal Law and Practice.

Blacking-out Offences and "the Occupier."

MENTION has already been made in these columns of problems that have arisen and may arise in the future with regard to the meaning of the word " occupier " in reg. 24 (2B) of the Defence Regulations (*ante*, p. 387). The regulation provides that if any order (such as the Lighting (Restrictions) Order, 1939) made under the regulation is contravened or not complied with in the case of any premises, the occupier of the premises shall (without prejudice to any proceedings which may be taken against any other person) be guilty of an offence against this regulation: Provided that, in any proceedings which by virtue of this paragraph are taken against any person in respect of a contravention of, or non-compliance with, such an order on the part of another person, it shall be a defence for the defendant to prove that the contravention occurred without his knowledge and that he exercised due diligence to secure compliance with the order.

On 7th August at Old Street Police Court (*R.* v. *Nagler and Segal, Ltd.*) the first defendant was fined £5, and the second, who had previously been convicted of a lighting offence, was fined £50 for permitting a light to shine from a stairway during the black-out. The defendants were occupiers of the second and the first floor of a building respectively. The tenancy agreement of the first defendant was put in on his behalf and there was an express term binding the landlord to light the staircase. It was argued that this term also obliged the landlord to effect the black-out, and that a tenant could not be held liable for an infringement of the black-out resulting from a light showing from a common stairway, in the absence of definite evidence of his responsibility. The stipendiary magistrate said that all four tenants might have been summoned, but a police constable had been told that the two summoned had the use of the staircase and they accordingly must be fined as occupiers.

In the previous comment (*ante*, p. 387) on this subject, the case under consideration was not quite the same, as the person summoned was the salaried managing director of a hotel who lived at a considerable distance from the hotel during the times specified in the lighting order. She could not therefore be said to be " occupier " of the hotel, as she was not in " control " at the material times (see *Bruce* v. *McManus* [1915] 3 K.B. 1, where on a charge under s. 3 of the Cinematograph Act, 1909, for using unlicensed premises for cinematograph exhibitions, the employers, and not the manager, were held to be the occupiers, as they had control of the exhibitions.

One of the earliest statements of the law on the meaning of the word " occupier " occurs in *Ironmongers Co.* v. *Naylor*, Poll. 216, where, in considering the effect of an early statute imposing a chimney tax on occupiers of houses, it was said: " Occupant and occupier are always in law taken for an actual possessor, one that useth, enjoyeth or manureth the land." A lodger, for example, in the absence of agreement to the contrary, is by his contract impliedly entitled to the use of the skylight on the staircase (*Underwood* v. *Burrows* (1835), 7 C. & P. 26), and probably could be described as an occupier of the skylight within the meaning of this definition, which appears to be quite general. One must, however, beware of using decisions as to the meaning of a general word of this type in other statutes in construing it in a particular statute. In *R.* v. *Somers* [1906] 1 K.B. 326, Lord Alverstone, C.J., declined to follow decisions on the meaning of the word " occupier " in s. 68 of the Railway Clauses Act, 1845, when interpreting s. 36 of the Highways Act, 1862. In that case he decided that persons entitled to a right of passage, either by easement or licence, over a driftway or other private road were not occopiers of the way within s. 36 of the Highways Act, 1862, so that their consent was unnecessary in an application to the justices for a declaration converting the way into a public highway.

To some extent statutes and common law relating to liabilities both criminal and civil for the state of premises afford guidance as to the meaning of the word. In " Salmond on Torts," 9th ed., p. 504, it is stated, with reference to the liability in tort of the occupier of premises to persons entering: " The person responsible for the condition of the premises is he who is in possession of them for the time being, whether he is the owner or not. For it is he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons." In *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, a landlord was held liable to injury to a person on the highway resulting from defective premises where he had expressly reserved to himself the right to enter and do repairs, and this did not exclude the liability of the tenant.

In *Wringe* v. *Cohen* [1940] 1 K.B. 229, 233, the Court of Appeal pronounced very positively: " In our judgment if, owing to want of repair, premises on a highway become dangerous and, therefore, a nuisance, and a passer-by or an adjoining owner suffers damage by their collapse, the occupier, or the owner if he has undertaken the duty of repair, is answerable whether he knew or ought to have known of the danger or not."

The inference may be drawn from these cases that both the landlord and the tenants may be criminally liable for blacking-out offences where the landlord has undertaken to light a common staircase, as the former has retained some measure of control, and the latter are enjoying the use of the staircase. If, however, the landlord gives no such undertaking it would seem difficult to establish any criminal liability against him as landlord, as he has no control of the premises for the purposes of the regulation. This is consistent with the magistrates' decision commented upon in a previous article (*ante*, p. 387), where a person necessarily absent from the premises at the material times was acquitted. The fact that the landlord may be liable however cannot, it is submitted, free the tenant of liability wherever he has any sort of use of the common staircase.

Bias of Court.

An allegation that a stipendiary magistrate was so biased that he should be prohibited from trying a charge of offending against s. 5 of the Public Order Act, 1936, was recently made in the Divisional Court on 16th July (*R.* v. *Watson; ex parte Moses*, *The Times*, 17th July). The offence charged was one of distributing a leaflet and thereby being guilty of insulting behaviour whereby a breach of the peace was likely to be occasioned. It was stated that the learned magistrate said, after the case for the prosecution had been opened: " This is the same as a leaflet which appeared in a similar case before me a short time ago when I sent the man to prison for five weeks. I see no difference between the two cases." In dismissing the motion for prohibition, the Divisional Court quoted the words of Wills, J., in *R.* v. *Worthing Justices* (1902), 73 J.P. 761, a speed limit case in which the chairman of the justices was alleged to have said that it would be a good thing if the motoring industry would be destroyed. The quotation was: " A magistrate is at liberty to entertain strong views on a subject though it were better if he kept his views to himself . . ."

The obvious reason why it is better for a magistrate to keep any strong views on any topic to himself is because, to quote the famous words of the Lord Chief Justice (*R.* v. *Hurst* [1924] 1 K.B. 256), it is important not only that justice should be done, " but also that it should manifestly and undoubtedly be seen to be done." Litigants and accused persons sometimes not unreasonably suspect that strong views are evidence of an interest which is not sufficiently detached, and it is well settled that any pecuniary interest in a case, or even a relationship with one of the parties, disqualifies a judge from hearing and determining the case, unless the parties agree to the contrary. Even a trivial interest as a shareholder in a company making a charge is sufficient (*R.* v. *Hammond*, 27 J.P. 274), and a justice with such an interest ought to withdraw from the bench during the hearing of the case. The implications of this judicial duty of self-control with regard to the expression of private views need to be appreciated in times when feeling on matters connected with public safety is apt to run high.

Changes of Name in War Time.

IT was one of the boasts of peace-time England that a man's name was what he chose to make it, that it was entirely his own concern, that he need not register it or submit to restrictions about it, as in so many foreign countries. This, however, can no longer be said to be true in virtue of some of the provisions of reg. 20 of the Defence (General) Regulations, 1939. Several serious problems arise and some of these have already been before the courts.

In order to appreciate these problems in their true light a brief account of the underlying principles of the law relating to names is necessary. Dealing with the surname, it is important to remember that it is not conferred by any formal ceremony; it is acquired by reputation. A man's name is that name by which he is reputed to be known. The operation of this process is guided by custom, which has now become so universal that we are inclined to regard it as law. Perhaps the two best known of these customs are that a legitimate child takes its father's name and that an illegitimate child takes its mother's name. Further, it is probably correct to say that at birth a child has no name, and that for a period of time, more or less indeterminate, it actually is without name, until in due course people become

to know it either by its father's or mother's name, as the case may be.

As a necessary corollary to the proposition that the acquiring of a name is not dependent on any formality, so the changing of a name, also, is not dependent on the carrying out of any formality, but is itself a change of reputation. As Lord Lindley said, in *Cowley* v. *Cowley* [1901] A.C. 450, the law

> " allows any person to assume and use any name, provided its use is not calculated to deceive and to inflict pecuniary loss."

It should be clearly understood that the various formal methods which are sometimes adopted in the change of a name do not themselves constitute the change, but are only of evidential value. They are a means of achieving notoriety for the act itself and of providing some written or documentary evidence of the change. The methods in question are a private Act of Parliament, Royal Licence or a deed poll enrolled at the Central Office. The first is very costly and cumbersome and is practically obsolete, and the second is usually used to fulfil some condition under a will or settlement involving a change of name and arms. The common method now used is by deed poll and the procedure is governed by Ord. LXI, r. 9. But a change of name can just as surely be accomplished by an informal change without any documentary record at all, by merely changing the name and getting one's relatives and friends to use that name. When this has been done the new name becomes the true name. It is, perhaps, with regard to changes of name that the best established custom of all is to be found; and this is that a woman on marriage takes on her husband's name. It has, by many, been thought that this custom has become such firmly established law that she loses her maiden name as completely as if she had never borne it. In *Fendall, otherwise Goldsmid* v. *Goldsmid* (1877), 2 P.D. 263, the Judge Ordinary said :—

> " I am of the opinion that marriage confers a name upon a woman which becomes her actual name and that she can only obtain another by reputation."

Again, *Allen and Wife* v. *Wood* (1834), 1 Bing. (N.C.) 8, deals with the remarriage of a widow, who published the banns in her maiden name. The marriage was held to be invalid, and Park, J., said :—

> " The statute requires the banns shall be published in the *true* names of the parties; here they were published under a fictitious name which in effect is no publication at all."

Of recent years a new custom has been growing up, dependent on the fact that many women have built up, before marriage, a professional reputation, and that they wish to retain their maiden name for professional use, whilst using their ordinary married name for social and private purposes. The position here would seem to be that, since they are commonly known by both names, they have acquired both names and thus, in fact, possess two names.

Unlike marriage, divorce does not bring in its train any automatic change of name. In this aspect it seems to be similar to the dissolution of a marriage by death. In the absence of any express act changing her name a divorced woman retains her husband's name. Of course, she, just as any other person, can by the appropriate methods assume a new name, either her maiden name or any other name.

It is not uncommon to find restrictions placed on aliens from which British subjects are free. Restrictions on the change of name by aliens are well known, but now since the beginning of the war reg. 20 of the Defence (General) Regulations has made it an offence for a British subject to attempt to change his name in a manner other than that specified in the regulation. By para. (2) no British subject who is in the United Kingdom at the coming into force of this regulation shall at any time after this date, assume, or use or purport to assume for any purpose whatsoever, any name other than that by which he was ordinarily known immediately before the coming into force of this regulation, unless he shall have published an appropriate notice. This notice shall be published twenty-one days before the day on which he first uses, assumes or purports to assume the other name, either in the *London Gazette*, the *Edinburgh Gazette*, or the *Belfast Gazette;* it must give the existing name in full, the change proposed to be made and the address of his place of residence or abode. If the person was not in the United Kingdom at the coming into force of the regulation, then the appointed date after which the change must not be made to a name other than that by which he was ordinarily known before that date, shall be the date on which he lands in the United Kingdom. In order to avoid the trouble of publishing notices in the *Gazette* twenty-one days in advance, in several very common and usual cases of change of name, para. (4) provides that in these exceptional cases the provisions of para. (2) shall not apply. These exceptional cases include—

(*a*) the assumption or use of any name in pursuance of a Royal Licence ;

(*b*) the assumption or use of any name in consequence of the grant of, or the succession to, a peerage ;

(*c*) the assumption or use by a married woman of her husband's name ;

(*d*) the carrying on of a business under a business name within the meaning of the Business Names Act, 1916, in such circumstances that registration is required under the Act or declared by the Act to be unnecessary.

Paragraph (5) (*a*) enacts that a name shall be deemed to be changed if the spelling thereof is changed. Any infringement of this regulation is an offence. Since no special penalty is set up for these offences, the general penalties as laid down in reg. 92 are applicable.

The question of a person's name also becomes of considerable importance in relation to the National Registration Act, 1939 [2 & 3 Geo. 6, c. 91], and the National Registration Regulations, 1939 (S.R. & O., No. 1248), made under it. Section 1 of the Act states that a register of all persons in the United Kingdom at midnight on the 29th of September shall be made and that there shall be recorded in the register such matters as shall be specified in the regulations. Among these matters which are set out in the first schedule to the regulations are to be found the full name and, in respect of persons over sixteen years of age, whether single, married, widowed or marriage dissolved by divorce. The appointed day for this purpose was the 29th September, 1939, a date later than the coming into force of reg. 20, which was the beginning of the war and thus the full name to be entered on the register is the name by which the person was ordinarily known immediately before the beginning of the war, unless, for instance, in the case of a woman, she had been married at some date between the beginning of the war and the 29th September, 1939, or any other of the provisions of reg. 20 (4) had come into play. Section 8 (1) (*a*) of the Act states that any person who knowingly or recklessly makes a statement for the purpose of the register which is false in a material particular is guilty of an offence and subs. (4) (ii) sets out the penalties. These are—

(i) on summary conviction, imprisonment for a term not exceeding three months, or a fine not exceeding £50, or both ;

(ii) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine not exceeding £100, or both.

A Conveyancer's Diary.

Defeasance of Legacies on Grounds of Religion.

Even in these days it is not by any means uncommon to find a testator who wishes to deprive of his bounty legatees who do or do not hold a given form of religious doctrine. Such clauses have recently given rise to a number of cases which are not, *prima facie*, easy to reconcile. In *Re May* [1917] 2 Ch. 126, the testatrix directed her trustees to hold a certain legacy of £5,000 upon trust to accumulate until her nephew Michael attained the age of twenty-four and thereafter on trust for Michael for life " until he shall after my death become a Roman Catholic." The legacy was also to go over if the nephew " shall . . . be a Roman Catholic at my death " unless " being a Roman Catholic at my death he shall cease to be a Roman Catholic before the expiration of twelve calendar months after my death." At the testatrix's death Michael was eleven years of age. His father was a Roman Catholic, and Michael had himself at an early age been baptised according to the rights of the Roman Catholic Church, and was being brought up by his father in that faith. In these circumstances the University of Oxford, which was under the will entitled to the £5,000 upon failure of Michael's interest, suggested that twelve months from the testatrix's death the legacy went over. Neville, J., held that although in the eyes of a Roman Catholic priest (and, indeed, on any ordinary view) Michael was a Roman Catholic, yet he was not capable in law, as a minor, of exercising the volition necessary to become or remain a Roman Catholic so as to defeat his interest. It followed that the question whether or not the legacy failed must be postponed till he was of age.

By 1931 Michael had attained the age not merely of twenty-one but of twenty-four, and swore an affidavit including the expression " I am and have been all my life a Roman Catholic." In these circumstances a new summons was issued to determine the destination of the £5,000 and accumulations. Both Luxmoore, J., and the Court of Appeal ([1932] 1 Ch. 99) held that in the events which had happened

Oxford University took the fund. The Court of Appeal seem to have doubted whether the earlier decision of Neville, J., was correct, but based their decision on the ground that, since Michael was over twenty-four and still a Roman Catholic the legacy went over under the clause providing for defeasance of the life estate if Michael *became* a Roman Catholic after the testatrix's death.

Granted the life tenant's plain statement that he was and always had been a Roman Catholic, it might seem difficult to come to any other conclusion. But the life tenant's counsel contended that the provisoes for defeasance were absolutely bad as being against public policy. The ground for this contention was that such a provision tended to make the life tenant's father, during his infancy, bring up the child in a religion in which he did not believe with an eye to material benefits. The authority cited for such a proposition was *Re Sandbrook* [1912] 2 Ch. 471, where a gift to infants provided they did not live with their father was held bad. The argument commended itself to Luxmoore, J., to the extent that he held that the gift was not defeated by the proviso requiring the life tenant to elect against the Roman Catholic faith at the end of a year from the testatrix's death. But it did not prevent him from holding that the gift failed to take effect when the life tenant was twenty-four and was still a Roman Catholic; and it was not accepted at all in the Court of Appeal. It is important to observe that the legacy in *Re May* was to go over not only in the event of an infant of tender years being or remaining a Roman Catholic, but also if that person became or was after he was twenty-four a Roman Catholic.

Eighteen months later the argument based on *Re Sandbrook* succeeded when it was advanced by the same learned leader in the more favourable circumstances of *Re Borwick* [1933] Ch. 657. Under the settlement there considered certain grandchildren of the settlor were to obtain interests vested (though not vested in possession) at the age of twenty-one, or, in the case of females, earlier marriage. By another clause it was declared that if any such grandchild "shall at any time before attaining a vested interest . . . be or become a Roman Catholic or not be openly or avowedly Protestant such grandchild" was to forfeit a moiety of his or her interest. Certain of the grandchildren were infants and had been baptised Roman Catholics and were being brought up in that faith. Bennett, J., quoted a passage in "Sheppard's Touchstone" (vol. i, p. 132) to the effect that conditions subsequent to defeat an estate are good if they are "compulsory, to compel a man to do anything that is in its nature good or indifferent"; or if they are "restrictive, to restrain or forbid the doing of anything which is in its nature *malum in se* . . . or *malum prohibitum* . . . But if the matter of the condition tend to provoke . . . some unlawful act or to restrain . . . a man from doing his duty, the condition for the most part is bad." The learned judge considered that Parker, J., had applied this doctrine in *Re Sandbrook* in holding a condition bad which tended to prevent a child being brought up by its father, and stated that he proposed to apply the same test here. He asked himself whether or not he himself would be fettered if one of those infants was a ward of court and he had to decide on his religious upbringing. As he felt that he would be so fettered, the father would also be fettered. Accordingly the condition was void "because it operates to prevent a man from doing his duty."

He also held the condition to be void for uncertainty, on the ground that it was impossible for a court to say of an infant affected by the condition that he had become a Roman Catholic or was not openly and avowedly Protestant.

In *Re Morrison* [1940] Ch. 102, the same learned judge was confronted with a will under which £5,000 was given to A for life with remainders to her children. The will came into force in 1909. It contained a ferocious clause of defeasance providing that if, *inter alia*, any "legatee . . . shall be or become a Roman Catholic" such legatee should absolutely forfeit all benefit under the will, and if such benefit was a life interest the fund out of which it issued should fall into residue." A had three children of whom one only was a Roman Catholic, and A herself became a Roman Catholic in 1934. It was held that the whole £5,000 fell into residue, which was very hard on the non-Roman Catholic children of A. *Re Borwick* was cited by counsel, but not referred to by the learned judge. But the distinction is fairly plain: in *Re Borwick* the gift was so framed that the question was whether an *infant* was a Roman Catholic; in *Re Morrison* the fact was that a woman of maturer years had embraced that faith.

Shortly afterwards in *Re Blaiberg* [1940] Ch. 385, Morton, J., had to deal with a forfeiture clause which was to take effect if any child or grandchild of the testator should "marry any person not of the Jewish faith." He held that this clause was void for uncertainty, taking the distinction that though the question whether a person *professes* a certain faith may be a matter of outward observance, yet the question whether he is *of* that faith "is a matter which lies in his conscience and is a matter of belief." Since on a codicil to that same will Farwell, J., had already held that a clause of defeasance depending upon not *professing* the Jewish faith was void for uncertainty, *a fortiori* the clause using "of" was void.

Finally, there is *Re Evans* [1940] Ch. 629, where property was given to the testator's daughter for life with remainder to her children, and it was declared that if any child or grandchild should "become a convert to the Roman Catholic religion" he or she was to forfeit his or her interest. The will was made in 1906; in 1920 the daughter married a Roman Catholic, and in May, 1922, was baptised according to the rites of the Roman Catholic Church. The only child of the marriage was born in 1921, and forthwith baptised according to those rites. The testator died in 1922, after his daughter's baptism. Farwell, J., held that since the clause operated in the event of a person "becoming a convert" the court could seize upon the positive fact of baptism and the clause was not void for uncertainty; but also that it only operated if such an event took place after the testator's death. Accordingly, neither daughter nor granddaughter had forfeited.

It appears from these cases that the law is in a somewhat uncertain condition. There is not much doubt, in view of *Re Borwick* and the first *Re May*, that one cannot fasten a defeasance on an infant. Equally, it is fairly clear from *Re Morrison* and the second *Re May* that the overt faith of an adult can be made ground for defeasance. But in view of *Re Blaiberg* and *Re Evans* one cannot be certain of making the clause effective unless one attaches the defeasance to an unequivocal act such as baptism. Finally, the court dislikes these (and most other) clauses of defeasance, and if they are to relate back to events in the testator's lifetime, they must be clearly so expressed (*Re Evans*).

Landlord and Tenant Notebook.

Agricultural Improvements Executed for Consideration.

CURIOUSLY enough, in no reported English case has the true interpretation of what is now s. 1 (2) (*a*) of Agricultural Holdings Act, 1923, been examined. But we have quite a series of Scottish decisions and *dicta* on the meaning of the counterpart of its 1908 predecessor.

As it now stands, this part of the subsection enacts: "In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account (*a*) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement, whether expressly stated in the contract of tenancy to be so given or allowed or not." The words "whether expressly, etc.," were added by the 1920 Act, presumably in order to dispose of the law laid down in the first of the Scottish cases to which I will refer.

This was *M'Quater* v. *Ferguson* [1911] S.C. 640, in which the ex-tenant claimed compensation for having applied artificial manure. In defence, the landlord pointed out that the lease had contained a covenant obliging the tenant to do what he had done, and contended that he must have received a corresponding benefit in the shape of a reduced rent. It was held that no benefit had been either given or allowed *in consideration of* the tenant effecting the improvement.

The landlord did not take the point that doing what he had undertaken to do could not qualify a tenant for compensation for improvements at all. This was successfully raised in the next case, *Galloway* (*Earl of*) v. *M'Clelland* [1915] S.C. 1062, argued before the Whole Court of Session and decided by a majority of one. It has since been disposed of by another amendment of the 1908 Act, effected by the Agricultural (Amendment) Act, 1921, and consisting of the insertion in subs. (1) of s. 1 of the words "and, in a case where the contract of tenancy was made on or after the 1st day of January 1921, then whether the improvement was or was not an improvement which he was required to make by the terms of his tenancy."

But in the case mentioned, the landlord claimed that as the tenant had been let off paying for temporary pasture he had been given or allowed a benefit in consideration of again laying down temporary pasture for which he now claimed compensation. This point was decided in the landlord's favour, *M'Quater* v. *Ferguson* being distinguished on the ground that in that case no benefit was alleged to an *incoming* tenant; but apart from that, the fact that the tenancy agreement provided for a six-shift rotation which inevitably brought the temporary pasture into existence at the time when the

term had determined was, in the then state of the law, held to preclude the claim.

The question was again raised in *Findlay* v. *Munro* [1917] S.C. 419, in which the ex-tenant had had, under the terms of his lease, to observe a five-shift rotation with an option to depart from its strict requirements in this way: he might allow part of the pasture to remain as it was for more than two years, but on resuming rotation was entitled to take two white crops in succession. It was held that this right did not represent a benefit, which, Lord Salvesen said, was "something which the tenant gets from the landlord, whereas this was just one of the possible incidents of a system of cropping the farm which the landlord permitted but of which the tenant did not avail himself."

The last case is *Mackenzie* v. *Macgillivray* [1921] S.C. 722, in which, the tenant having proved his improvement, the landlord claimed to have conferred a benefit by not determining the tenancy as early as he could have, and by renewing it unconditionally. But it was held that the landlord could not found upon this circumstance "without connecting such action with the tenant's method of treating the land in the way of consideration."

The point determined under the 1908 Act in *Galloway (Earl of)* v. *M'Clelland* and disposed of by the 1920 amendment was last heard of in *Huckell* v. *Saintey* [1923] 1 K.B. 150, (C.A.), when a claim was made for an improvement consisting of the planting of fruit trees and bushes. The lease was for fifteen years commencing in 1906, and the tenant had covenanted in a carefully drawn covenant to plant the trees and bushes. It was, of course, open to the tenant to dispute the validity of the Scottish decision. But, looking at the successive amendments effected by the 1920 and 1921 Acts, the court felt bound to arrive at the conclusion that this was a case of compromise. The legislature had agreed, as it were, that the seven Scottish judges who decided in the landlord's favour in *Galloway (Earl of)* v. *M'Clelland* were right, and the six colleagues wrong, in their interpretation of the 1908 enactment as it then stood; they might have avoided the effect of that decision by including within the scope of the amendments improvements made under any contracts of tenancy made since the passing of the 1908 Act; but they preferred to mitigate it by making the new provision applicable only to tenancies created after 1920.

Our County Court Letter.

Non-Acceptance of Swedes.

In *Bowen* v. *Williams*, recently heard at Hereford County Court, the claim was for £12 10s. as damages for breach of contract. The plaintiff's case was that in December, 1939, he had advertised swedes for sale. In reply to the advertisement, the defendant agreed to buy five tons at £2 10s. a ton. The plaintiff arranged for transport, but the defendant suggested on the 23rd January that he should pay 55s. a ton if the plaintiff would pay haulage, viz., 7s. 6d. a ton. This would have involved the plaintiff in a loss of 2s. 6d. a ton, on the basis of the original price, and the proposal was rejected. In February the defendant wrote that he had bought swedes elsewhere. The defendant's case was that on the 6th January he was notified by the plaintiff that the swedes were not yet ready. As the roads subsequently became too bad for lorries, he considered the transaction was "off" and he bought swedes elsewhere. His Honour Judge Roope Reeve, K.C., observed that the defendant could not have considered that the contract was rescinded, as he was still negotiating with the plaintiff about transport at the end of January. Judgment was given for the plaintiff, with costs.

Thefts from Cars Outside Hotels.

In a recent case at Dartford County Court (*Clapham* v. *Shearmur*) the claim was for £56 6s. as damages for breach of the defendant's duty as an innkeeper. The plaintiff's case was that, while a guest at the Farningham Hotel, Farningham, he had left his car in the car park, opposite the entrance of the hotel. On his return the plaintiff found that property was missing to the amount claimed. The defendant's case was that the car was never "within the inn" and that the loss occurred through the negligence of the guest in not locking his car. His Honour Judge Sir G. B. Hurst, K.C., held that the plaintiff, in leaving his car (with its valuable contents) unlocked, had failed to use the ordinary care which a prudent man might reasonably be expected to take. The mere fact of the car being in a car park did not relieve the plaintiff from the obligation to use such care. Judgment was given for the defendant, with costs.

The case was therefore distinguished on the facts from *Stewart* v. *Titley* (1939), L.J.C.C.R. 89, heard by the same county court judge. The plaintiff had left his car in the car park of the "Black Prince" on Rochester Way. As the war had not then begun, the car park was flood-lit, and an attendant in a peaked cap was present. The car was missing at 11.20 p.m., but it was eventually recovered. The plaintiff nevertheless claimed damages for its temporary loss. The defence was that the car was not "within the inn," and the goods were not "lost." It was held that the goods were within the inn, whereupon the defendant's common law liability arose. The only exoneration of the innkeeper must be based upon an act of God, the King's enemies or the negligence of the guest. None of these grounds was advanced, and judgment was therefore given for the plaintiff for £52 and costs.

The leading case on this subject is *Aria* v. *Bridge House Hotel (Staines), Ltd.* (1927), 137 L.T. 299. It was there held that a notice under the Innkeepers' Liability Act, 1863, s. 1, did not limit the liability to £30 if a guest's car were stolen. Judgment was therefore given for the plaintiff for £267 10s., and costs.

Reviews.

Stone's Justices' Manual, 1940. Seventy-second Edition. Edited by F. B. Dingle, Solicitor, Clerk to the Justices for the City of Sheffield, and E. J. Hayward, O.B.E., Solicitor, Clerk to the Justices for the City of Cardiff. Demy 8vo. pp. cccviii, 2628 and (Index) 182. London: Butterworth and Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Price 42s. net. Thin edition, 47s. net.

Each successive edition of this unrivalled work never fails to impress the reviewer with its ever-increasing wealth of detail and its amazing accuracy. The seventy-second edition is true to tradition. Among its welcome accretions must be noted a 144-page supplement on the Emergency Legislation, adequately annotated and carefully selected. Little, if any, new authority affecting the work of the justices has escaped the attention of the editors. An excellent example of the care with which the full effect of new authority has been considered is to be found in the case of *Ettenfield* v. *Ettenfield*, 162 L.J. 172, in which the Court of Appeal held that the rule in *Russell* v. *Russell* [1924] A.C. 687 applies not only when the spouses are living together, but also when they are separated either by a decree of a court of competent jurisdiction or by their own volition. The editors, after careful consideration whether this applies to the case of a married woman living apart from her husband who applies for an affiliation order, have come to the conclusion that it does not apply. Another example of the care with which the effect of a decision is stated is in *Rubie* v. *Faulkner*, 56 T.L.R. 303, in which it will be remembered that a supervisor of a learner-driver was found guilty of aiding and abetting the driver to drive without due care and attention, because he was passive in circumstances in which he should have been active to prevent an accident. The Lord Chief Justice pointed out that it was a pure question of fact in every case, and the statement of the case in "Stone" bears this out. In the note on *Pagett* v. *Mayo* [1939] 2 K.B. 94, it is stated that there is no obligation to report an accident in accordance with s. 22 of the Road Traffic Act, 1930, where the damage or injury is to property other than a vehicle or animal, e.g., a wall. While this is an accurate statement of the result of the case, it might be noted in future editions that it is difficult to imagine injury to a wall by a moving vehicle without injury to the vehicle, and in future prosecutions of the hit and run type of motorist it might be possible to succeed on this ground. It is also submitted that a practical note on the trend of magisterial decisions on the meaning of the words "in charge" in the "drunk in charge" section of the Road Traffic Act, 1930, would be useful, as there is an appalling dearth of authority on the point. The point is of vital importance to owners who attend celebrations and leave their cars to be called for by chauffeurs. The gratitude of the bench and the legal profession is due and owing to those responsible for the publication of an admirable edition of an admirable work under most difficult circumstances.

Books Received.

Effect of War on Contracts. By George J. Webber, LL.M., of the Middle Temple and the Northern Circuit, Barrister-at-Law. 1940. Demy 8vo. pp. xliii and (with Index) 568. London: The Solicitors' Law Stationery Society, Ltd. Price 37s. 6d. net.

Dumsday's Local Government Law and Legislation. Arranged and edited by Alfred Fellows, B.A., and Alfred R. Llewellin-Taylour, M.A., F.R.S.A., both of Lincoln's Inn, Barristers-at-Law. 41st year. 1940. Demy 8vo. pp. xvi and (with Index) 802. London: Hadden, Best & Co., Ltd. Price 47s. 6d. net.

To-day and Yesterday.

Legal Calendar.

12 August.—On the 12th August, 1833, Captain Henry Nicholl, formerly of the 14th Regiment of Foot, was hanged outside Horsemonger Lane Gaol, having been convicted at the Croydon Assizes of unnatural offences. The night before his execution he slept soundly and in the morning he seemed anxious for the arrival of the sheriff. On the scaffold he spent a short time in prayer before the drop fell. There was a large concourse "and amongst the spectators were many females who by their shouts manifested their abhorrence of the criminal."

13 August.—On the 13th August, 1839, Charles Wakely, a farm labourer, was condemned to death at the Bridgwater Assizes for the murder of Eliza Pain, a girl employed by his master. In passing sentence Mr. Justice Coleridge showed signs of being deeply affected. "The prisoner, who persisted in pleading guilty, appeared conscious of the enormity of his offence, and his truly penitent appearance gained the pity of all who saw him." He confessed that while the girl was driving the cows home he had attacked her and that when she resisted he had cut her throat.

14 August.—Our early law reflecting a primitive, perhaps a prehistoric attitude, decreed that a thing which had been instrumental in the taking of human life should be forfeited. This was called a 'deodand" and in time it became a money payment made to the Crown representing the assessed value of the object which caused death. This business was only swept away in 1846, when a mechanical age found that its continuance was likely to prove expensive to limited companies. Thus, on the 14th August, 1838, the jury investigating a fatal explosion on board the "Victoria" steamship near London Docks levied a deodand of £1,500 on the boiler and engine.

15 August.—On the 15th August, 1803, John Hatfield began the last chapter of his life when he entered the dock at the Carlisle Assizes to be tried for forgery. He made a plausible defence, for his life had been that of an accomplished imposter, but the verdict of the jury hanged him now. He had begun life as a commercial traveller, got a lift in position by marrying the natural daughter of Lord Robert Manners, deserted her when her dowry was spent, carried out a series of frauds by giving himself out as a connection of the Rutland family and made his final coup by appearing in Cumberland as the Hon. Alexander Hope, M.P. He died none too soon on the gallows at Carlisle at the age of forty-five.

16 August.—On the 16th August, 1773, Dr. Johnson was discussing Lord Monboddo's theory that an ape might speak and someone said that he believed the existence of everything possible. Johnson said with his clear logic: "But, sir, it is as possible that the ourang-outang does not speak as that he speaks. However, I shall not contest the point. I should not have thought it possible to find a Monboddo, yet he exists."

17 August.—On the 17th August, 1935, Sir John Ross, last Lord Chancellor of Ireland, died at Dunmoyle, in County Tyrone. He was eighty-one years old. Londonderry was his birthplace, and he was called to the Bar in 1879. In 1896 he became a Judge of the High Court of Justice in Ireland, and in 1902 he was made a Privy Councillor. In 1921 he was appointed Lord Chancellor, but in the following year that office, which had existed since the twelfth century, was abolished by statute. He was a popular judge, tall, handsome, with a lovely Derry accent and a twinkle in his eye.

18 August.—On the 18th August, 1762, "three persons were executed at the Grève at Paris by torch-light, whose names and crimes are kept secret. One of them was broke upon the wheel and the other two beheaded. Monsieur Vandreuil, Governor of Canada, is said to be one." This was the period of the defeat of the French in the province which was ceded to England in 1763.

THE WEEK'S PERSONALITY.

Lord Monboddo, the eccentric Scots judge, is one of the strangest characters the legal world has produced. A learned, generous, amiable man, he was full of oddest peculiarities. In the Court of Session he would not sit with his fellow judges, but took his place among the clerks. He generally dissented from the opinions of his brethren and often held out alone against them. It was, however, in his philosophic and scientific work that he differed most from his contemporaries and his speculations and theories attracted a good deal of attention. In his work on "The Origin and Progress of Language," he maintained that the ourang-outang was a class of the human species and that its want of speech was merely accidental. During the legal vacation he lived on his small estate as a plain farmer among his tenants, treating them with familiarity and kindness. He visited London every year, and till he was eighty always travelled on horse back, attended by a single servant.

GENTLER JUSTICE.

At Aldershot recently, when a young soldier summoned his parents, who had withheld their consent to his marriage with the girl of his choice, the magistrates sanctioned the union and remitted the court costs as a wedding present. Lately there seems to have been more than usual of this softening of the heart, for when the magistrate at Tottenham asked a youth whether there was any reason why he should not be sent to prison he replied "No, sir, except that I was married yesterday and would like to go home to my wife." His wish was granted. At Luton the magistrates actually paid a labourer's 5s. black-out fine when told by his wife that he had six children. However, a man charged at the Mansion House with being concerned in warehouse breaking went rather far when he said: "Last week I was allowed out on bail to enable me to get married, but I found I had not sufficient money. The special licence will cost me £2 16s., and I was wondering whether you could give me any assistance from the Prisoners' Aid Fund."

THE WAY IN U.S.A.

As one might expect, America has produced the most hopeful plea lately put forward from the dock. A man charged at Glendale with burglary said: "I'm doing it to pay my way through the Los Angeles City College." Less ambitious but likewise optimistic was the tramp at Nebraska who told Judge Palmer that his name was "Suspended Sentence Stevens." But the judge replied: "Well, they call me 'Ten-day Palmer.'" Too much self-confidence does not always pay in the courts of the United States. I like the story of the man who, on being fined 200 dollars, smiled and said: "That's O.K., judge, I got that in my pants pocket," to which the judge replied: "Then I will add one year's imprisonment. Got that in your pants pocket?" Then there was the Chicago judge who warned a young woman: "Be careful. You'll talk yourself into jail." She answered: "If I do that I can talk myself right out again." He immediately sentenced her, adding: "You can start preparing that speech right now."

Obituary.

MR. J. J. COCKSHOTT.

Mr. John James Cockshott, solicitor, senior partner in the firm of Buck, Cockshott & Cockshott, solicitors, of Southport, has died at the age of ninety-two. Mr. Cockshott was admitted a solicitor in 1873.

MR. J. COOKE.

Mr. Joe Cooke, solicitor, of Messrs. J. & E. Cooke, solicitors, of Hyde, Cheshire, died on Thursday, 25th July, at the age of eighty-one. Mr. Cooke was admitted a solicitor in 1882.

MR. P. H. COXE.

Mr. Philip Henry Coxe, solicitor, for many years a partner in the firm of Bischoff & Co., solicitors, of 4 Great Winchester Street, London, E.C.2, died on Thursday, 8th August, at the age of eighty-six. Mr. Coxe was admitted a solicitor in 1880.

MR. A. C. HILLIER.

Mr. Alfred Charles Hillier, solicitor, of Messrs. Hillier, Naish & Co., solicitors, of Bath, died recently. Mr. Hillier was admitted a solicitor in 1919.

On Active Service.

CAPTAIN G. G. DUNN.

Captain George Gilhespy Dunn, solicitor and partner in the firm of Maughan & Hall, solicitors, of Newcastle-upon-Tyne, has been killed in action whilst serving with the Durham Light Infantry. He was admitted a solicitor in 1928.

Court Papers.

IN THE HIGH COURT OF JUSTICE—CHANCERY DIVISION.

EXTENSION OF TRINITY SITTINGS.

Rota of Registrars in attendance on

Date.	Court of Appeal.	Judge.
Aug. 19 ..	More	Blaker
„ 20 ..	Blaker	More
„ 21 ..	More	Blaker
„ 22 ..	Blaker	More
„ 23 ..	More	Blaker
„ 24 ..	Blaker	More

Notes of Cases.

HOUSE OF LORDS.

Knightsbridge Estates Trust, Ltd. *v.* Byrne and Others.

Viscount Maugham, Lord Atkin, Lord Wright, Lord Romer and Lord Porter. 22nd April, 1940.

Mortgage—Large number of properties—Long term—Whether mortgagors entitled to redeem earlier.

Appeal from a decision of the Court of Appeal [1939] Ch. 441 (82 Sol. J. 989).

By a mortgage made in 1931, in consideration of £310,000 then paid to them by the defendants (the mortgagees) the plaintiffs (the mortgagors) covenanted to repay the principal with interest at £5 5s. per cent. per annum by eighty half-yearly instalments, the whole amount to become due in case of default in payment of any instalment. The mortgaged property, demised to the mortgagees for a term of 3,000 years from the date of the mortgage subject to a proviso for redemption, consisted of a large number of freehold dwelling-houses, shops and flats in Westminster. It was provided, *inter alia*, that the statutory powers of leasing should not be exercisable by the mortgagors for the purpose of granting any term exceeding three years without the consent of the mortgagees, such consent not to be unreasonably withheld. On breach by the mortgagors of any of the provisions of the mortgage the powers and remedies conferred on the mortgagees by the Law of Property Act, 1925, were to become immediately exercisable by them. It was provided that those powers and remedies should become exercisable if the mortgagors sold the equity of redemption in the mortgaged property or any part thereof. The mortgagors had no power to sell any part of the property free from the mortgage. In this action the mortgagors contended that they were entitled to redeem the mortgage on the usual notice of six months. The mortgagees contended that they could only redeem by the payments provided for spread over a period of forty years. Luxmoore, J., gave judgment for the plaintiffs. The Court of Appeal held that the postponement of the right of redemption was not a clog on the equity, and allowed the appeal. The plaintiffs now appealed. (*Cur. adv. vult.*)

Viscount Maugham, L.C., said that the three questions of law which emerged were (1) whether the provisions in the mortgage postponing the right of redemption were void in equity; (2) whether any of the provisions of the mortgage were invalidated by the rule against perpetuities; and (3) whether the mortgage was a debenture within the meaning of s. 74 of the Companies Act, 1929. He (his lordship) would reserve any expression of opinion on the first point of a case where s. 74 did not apply. By s. 74 "A condition . . . in any debentures . . . shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote . . . any rule of equity . . . notwithstanding." By s. 380 "In this Act, unless the context otherwise requires . . . 'debenture' includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of a company or not." If, therefore, the mortgage were a debenture the appellants could not succeed. His lordship then referred to s. 14 of the Companies Act, 1907; s. 285 of the Companies Act, 1908; s. 99 of, and the Second Schedule to, the Companies Act, 1928, and said that, apart from any definition, "debenture" had no precise meaning. His lordship referred to *Levy* v. *Abercorris Slate & Slab Co.* (1887), 37 Ch. D. 260, at p. 264; *British India Steam Navigation Co.* v. *Inland Revenue Commissioners* (1881), 7 Q.B.D. 165, at p. 172; *Lemon* v. *Austin Friars Investment Trust, Ltd.* [1926] Ch. 1; and Buckley on the Companies Acts (11th ed., at p. 174). Was there any reason for limiting s. 74 of the Act of 1929 to debentures of a series issued to a number of subscribers in one of the forms now in common use, or in some such way? The equitable rule was based on the hypothesis that in a contract for a loan the borrower was not usually contracting on equal terms with the lender. His lordship referred to *Floyer* v. *Lavington* (1714), P. Wms. 268, and *G. & C. Kreglinger* v. *New Patagonia Meat &c. Co.* [1914] A.C. 25, at p. 36. Loans made to limited companies on the security of their assets were generally very different from loans to individuals. A company could only rarely be at the mercy of a lender, and oppression was unlikely against a company. There was no strong argument for saying that s. 74, or any of its predecessors, ought by reason of its nature to be confined to what might be called ordinary debentures. There was no context which "otherwise required." His lordship referred to ss. 73–78 and said that "debenture" was used in numerous sections, and must be admitted in more than one sense. The practice of inserting a definition in such a case had often been criticised (see per Blackburn, J., in *Lindsay* v. *Cundy* (1876), Q.B.D. 348, at p. 358, and per Lord St. Leonards in *Dean of Ely* v. *Bliss* (1844), 2 De G.M. & G. 459, at p. 471). The word "debentures" in s. 74 must be given the meaning set out in s. 380. With regard to the rule against perpetuities, the courts below were justified in declining to depart from the established rule that mortgages were not within the rule. It seemed more than ever difficult to revoke the rule in relation to mortgages since the Law of Property Act, 1925. The word "only" in s. 74 left open for consideration by the court cases where there had been hardship or oppression by the mortgagee. The terms of the present mortgage were not such as, read in the light of s. 74, would justify the interference of the court. The appeal should be dismissed.

The other noble lords agreed.

Counsel: *Vaisey*, K.C., and *Stamp*; *Gover*, K.C., and *Wilfrid Hunt*. Solicitors: *Clifford-Turner & Co.*; *Sharpe, Pritchard & Co.*, for *Bremner, Sons & Corlett*, Liverpool.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

COURT OF APPEAL.

Rousou *v.* Photi (Gort Estates Co., Third Parties).

Sir Wilfrid Greene, M.R., Scott and MacKinnon, L.JJ. 29th April, 1940.

Housing—Annual "rent"—Method of calculating—Whether sum paid by landlord for rates on demised premises to be deducted—Housing Act, 1936 (26 *Geo.* 5, *and* 1 *Edw.* 8, *c.* 51), s. 2.

Appeal from a decision of Atkinson, J. [1940] 84 K.B. 189 (84 Sol. J. 198).

The plaintiff claimed from the defendant damages for personal injuries suffered by him through the falling of the ceiling of the room which the defendant let to him for 7s. a week. The room was part of the second floor of a house, which floor the third parties let to the defendant at 27s. 6d. a week, themselves paying all rates and taxes, the amount of which attributable to the second floor was £5 10s. a year. If the tenancy from the third parties to the defendant lasted a year, a total of £45 10s. would be paid by him to them. The defendant having claimed to be indemnified by the third parties against the plaintiff's claim, contending that the tenancy fell within s. 2 of the Housing Act, 1936, the issue was directed to be tried whether or not that contention was correct. By s. 2 of the Act: "in any contract for letting for human habitation a house at a rent not exceeding (*a*) in the case of a house situate in the Administrative County of London £40 . . . there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, in all respects reasonably fit for human habitation." Atkinson, J., held that the rent payable must be ascertained by deducting from the sum paid by the tenant that part of it which the landlord had to pay away for rates, and therefore that the defendant was entitled to his indemnity as the actual rent paid was £40. The third parties appealed.

Sir Wilfrid Greene, M.R., said that it might be argued (and counsel for the third parties quite rightly had not given up the point) that the section did not apply to houses which were let at something other than an annual rent. Atkinson, J., had not accepted that view, and there were evidently difficulties in its way. If it were accepted, the section would fail to give protection to a vast number of persons for whom its protection was eminently desirable. He (the Master of the Rolls) saw no reason to differ from Atkinson, J.'s, view on that point; but, as it had not been fully argued, he did not propose to do more than assume in favour of the defendant that his contract was one to which the section was capable of applying notwithstanding that it was a weekly tenancy and that the rent was a weekly one. On the main point, he could not accept Atkinson, J.'s, view of the construction of the section. The section required the existence of a contract; the rent referred to in it meant, and meant only, the rent payable by virtue of that contract by the tenant to the landlord. There was no justification for dissecting that contractual payment and attributing part of it to something which was called the annual value of the house, or of part of the house, and the rest of it to rates of an apportioned sum in respect of rates. The Legislature had taken a simple and clear test about which nobody could be confused—namely, the actual contractual rent paid by the tenant to the landlord. If the true view were that the section applied to weekly tenancies not merely of houses, but of parts of houses, it appeared incredible that the Legislature should have laid down in terms a test with regard to contractual rent which could only be applied after the completion of what might be an elaborate and difficult process of estimating the proper proportion of the rates to be attributed to one, two or three rooms, or to three rooms and the use of a bathroom, or to all the various possible complications. The test adopted by the Legislature had the advantage of being a simple one, and that was what the section meant. Atkinson, J., had relied on *Sheffield Waterworks Co.* v. *Bennett* (1872), L.R. 7 Ex. 709, and *Smith* v. *Birmingham Corporation* (1883), 11 Q.B.D. 195, both of which involved construction of a section dealing with a water rate. It was held in both cases that it was possible there to construe "rent" as meaning "annual value." That decision was easier to reach in those cases—although even there recognised as difficult—by virtue of the circumstance that to construe "rent" as meaning the contractual rent payable under a lease or tenancy would have left the freeholder out altogether. On balance, the courts, on the scope and intention and construction of those particular Acts, succeeded in construing the sections in that way. Those authorities dealt with a different matter expressed in different language. In his (his lordship's) opinion, "rent" in s. 2 of the Housing Act meant contractual rent, and no deduction must be made for rates, taxes or anything else in ascertaining it. Finally, it was argued that, on the assumption that the section applied to weekly tenancies, it was not proper to take the weekly rent and multiply it by fifty-two, because, in order to translate a weekly rent into the terms of an annual rent, it was necessary to allow for periods during which the house or part of the house might stand empty without any tenant. But if the amount of

the weekly rent ought to be multiplied by a different figure than fifty-two, it was for the person relying on the section to show what the multiplier should be; no evidence on that point had been adduced. The appeal must be allowed.

SCOTT and MACKINNON, L.JJ., agreed.

COUNSEL: *Kingham; Molony.*

SOLICITORS: *Walfords; Leonard Kasler.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re Luck; Walker *v.* Luck.

Sir Wilfrid Greene, M.R., Scott and Luxmoore, L.JJ.
21st June, 1940.

Conflict of laws—At birth of child legitimation impossible under law of domicil—Change of domicil—Legitimation under new law—Recognition in English courts.

Appeal from Farwell, J. (84 SOL. J. 169).

In exercise of a power of appointment to issue contained in their marriage settlement of 1867, F. G. Luck and his wife, in 1888, by deed, duly appointed the settled property to all the children of their marriage, and they declared that the share of each child was to be retained by the trustees upon trust to pay the income thereof unto such child for life and after his death to divide the same equally between all the children of such deceased child who should be born within twenty-one years from the death of the survivor of the appointors. F. G. Luck survived his wife and died in 1896, and the twenty-one years from his death expired in 1917. By his will, F. G. Luck gave all his residuary estate to his trustees upon trust for his children, and he directed his trustees to hold the share of each child upon trust to pay the income thereof to such child for life and after the decease of such child his trustees were to hold his share in trust for all the children if more than one, at twenty-one or marriage, of the deceased child in equal shares. F. G. Luck and his wife had nine children. This summons was only concerned with the share of the third child, Frederick Luck. This son married in 1893. There were two children of this marriage, the second and third defendants. Frederick Luck left his wife and went to live with another woman. The first defendant, David Luck, was the child of this union. He was born in 1906 in California, when his father was domiciled in England. In 1922 Frederick Luck was divorced by his first wife, and he married again in the same year. He did not marry the mother of David Luck, but in 1925, when he had become domiciled in California, he formally adopted David Luck. Under the law of California the effect of this adoption was to make David Luck the legitimate son of his father as from the date of his birth. This summons raised two questions, namely: whether David Luck was entitled, as a child of Frederick Luck, to share (*a*) in the share of the marriage settlement funds settled on Frederick Luck; (*b*) in the share of the residuary estate settled on Frederick Luck. Farwell, J., held that David Luck's status was governed by the law of his domicil. Accordingly, as he was legitimate as from the date of his birth under the law of California, he was entitled to share both in the marriage settlement funds and in the residuary estate.

LUXMOORE, L.J., delivering the judgment of Sir Wilfrid Greene, M.R., and himself, allowing the appeal, said: where a child is born illegitimate the authorities showed that the English courts would recognise his legitimation *per subsequens matrimonium* only if the law of the domicil of the putative father at the time both of the birth and of the marriage recognised such legitimation (*Munro* v. *Munro* (1840), 7 Cl. & Fin. 842; *Re Wright's Trust* (1856), 2 K. & J. 595; *Udny* v. *Udny* (1869), L.R. 1 Sc. & Div. 441; *Re Grove; Vaucher* v. *Treasury Solicitor* (1888), L.R. 40 Ch. D. 216. These authorities established the principle that, before legitimation could take place, the status of illegitimacy acquired at birth under the law of the domicil of the father must have, as an integral part of itself, the potentiality of legitimation. If it had not that potentiality, it was incapable of change. There was no logical distinction between the present case and the case of legitimation *per subsequens matrimonium*.

SCOTT, L.J., dissented.

COUNSEL: *J. A. Reid; A. F. M. Berkeley; Neville Gray*, K.C.; and *A. J. Belsham.*

SOLICITORS: *Stibbard, Gibson & Co.; Crane & Hawkins; Kenneth Brown, Baker, Baker.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

APPEALS FROM COUNTY COURTS.

Greenwood *v.* Central Service Co., Ltd., and St. Marylebone Borough Council.

MacKinnon and Luxmoore, L.JJ., and Tucker, J. 26th and 27th June, 1940.

Refuge on highway—Duty to light bollard—No absolute duty apart from negligence—Onus of proof—Effect of Lighting (Restrictions) Order, 1939 (S.R. & O., 1939, No. 1098, paras. 1 and 4 (d))—Metropolis Management Act, 1855 (18 & 19 Vict., c. 120), ss. 108 and 130.

Appeal by the defendants from a judgment of Deputy Judge Elliott Gorst at Bloomsbury County Court on 9th April, 1940. The judgment was given against Central Service Co., Ltd., and in favour of the St. Marylebone Borough Council, who had been joined as defendants and whom Central Service Co., Ltd., had cited as third parties. The defendants alleged that the St. Marylebone Borough Council were joint tortfeasors with their driver and were liable to contribute under the Law Reform (Married Women and Joint Tortfeasors) Acts, 1935, to the damage that they had to pay. The learned deputy judge had held Central Service Co., Ltd., liable to pay the plaintiff £80 damages for negligence and acquitted the borough council of negligence. At 8 p.m. on 7th October, 1939, the plaintiff was a passenger in a taxicab belonging to the defendants, when the driver ran into a bollard on a street refuge situated in Goodge Street, W. The refuge could not be lit at the date of the accident, as it usually had been in compliance with s. 130 of the Metropolis Management Act, 1855, owing to the Lighting (Restrictions) Order, 1939 (S.R. & O., 1939, No. 1098). Paragraph 1 of that Order provides: "Subject as hereinafter provided, no person shall, during the hours of darkness cause or permit— . . . (*b*) any light, not being a light in a roofed building, closed vehicle, or other covered enclosure, to be displayed." Paragraph 4 provides that para. 1 shall not apply to certain lights for the guidance of traffic in roads, including lamps indicating obstructions upon or near the carriageway of any road, provided that they are of candle-power not exceeding 1·0, and so screened as to prevent light being thrown upwards and any appreciable glow being produced on the road surface. The obligation under the Metropolis Management Act, 1855, s. 130, had been to cause the several streets within the district to be well and sufficiently lighted, and for that purpose to maintain or set up and maintain a sufficient number of lamps in every such street. Section 108 of the Act gave power to a local authority to erect street refuges on the carriageway. The St. Marylebone Borough Council had hung hurricane lamps of candle-power 1·0 on the bollards of each refuge in their district, in accordance with the Lighting (Restrictions) Order, 1939, and employed men to go round the district in a lorry to see that the lights remained lit. At the time of the collision the lights on the refuge in question had gone out.

MACKINNON, L.J., said that the effect of the Lighting (Restrictions) Order, 1939, which had the force of a legislative enactment, was to repeal temporarily the obligation imposed upon the respondents by the Metropolis Management Act, 1855, s. 130. There would remain, however, a common law obligation upon the respondents, having erected an obstruction in the highway, to use reasonable care to prevent it from being a danger to persons using the highway. The county court judge had held that the obligation of the respondents to light this obstacle was only to use reasonable care in the lighting of it and was not an absolute obligation. His finding of fact, which bound the court, was that there was no negligence on the part of the borough council. The obligation of the borough council was only to use reasonable skill and care and was not an absolute duty. The proper principle was that laid down by Lord Blackburn in *Geddis* v. *Bann Reservoir Proprietors* (1878), 3 A.C. 430, 455, 456, where he said that no action would lie for doing that which the Legislature had authorised if it be done without negligence, although it does occasion damage to anyone, and if, by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is, within this rule, negligence not to make such reasonable exercise of their powers. The appeal failed and must be dismissed with costs.

LUXMOORE, L.J., said that there was nothing in s. 108 or s. 130 of the Metropolis Management Act, 1855, which imposed any duty to put any light upon an obstruction, or to do anything more than keep the street well and sufficiently lighted. Paragraph 1 of the Lighting (Restrictions) Order, 1939, which came into force on 1st September, 1939, prohibited the showing of any light, and so plainly absolved the St. Marylebone Borough Council from any liability to keep the streets in their jurisdiction well and sufficiently lighted under the Metropolis Management Act, 1855, s. 130. Paragraph 4 of the Order did not impose any statutory duty, but enabled the strictness of the Order against displaying any light to be departed from in specified cases. On the question whether the local authority had any duty to light a refuge placed on the highway in accordance with s. 108 of the Metropolis Management Act, 1855, Bankes, L.J., had said in *Baldock* v. *Westminster City Council* (1918), 88 L.J.K.B. 502, that the statute imposed no special duty on the local authority to light the refuge, but did impose upon them the general duty to cause the streets within their district to be well and sufficiently lighted, and *prima facie* that duty included a duty to provide sufficient light to indicate the position of any obstructions which they placed in the street under s. 108. The lighting regulations which had then come into force were not called to the attention of the court. It was plain that Scott, L.J., in his statement of the law with regard to the duty of a metropolitan borough council with regard to lighting obstructions in *Polkinghorn* v. *Lambeth Borough Council* (1938), 1 All E.R. 339, 343, was referring to a duty depending on "wrongful intent or negligence" ("Salmond on Torts," 9th ed., p. 502), and not to an absolute statutory duty. Cassels, J., was in error if and so far as he held, in *Wodehouse* v. *Levy* (1940), 3 All E.R. 137,* that there was an absolute duty to maintain a light on an obstruction lawfully erected in a street, so that the borough council would be liable if from any cause whatever, and without any fault on the part of the borough council, the light which was provided failed to function. There was ample evidence for the county court judge to find, as he did, that the St. Marylebone Borough Council provided a proper lamp and took all

* *Wodehouse* v. *Levy*, *supra*, was reversed by the Court of Appeal on 30th July 1940.

reasonable steps to see that it performed its proper function. With regard to the question whether the street refuge constituted a nuisance, the short answer was that the street refuge was properly erected by the borough council under the powers conferred upon it by s. 108 of the Metropolis Management Act, 1855 (*Great Central Railway Co.* v. *Hewlett* [1916] 2 A.C. 511).

TUCKER, J., said that the circumstances of the case were almost entirely the same as those in *Polkinghorn* v. *Lambeth Borough Council, supra*, the only difference being that the accident in that case arose in times of peace. That case showed that the onus of showing how the bollard came to be unlighted is thrown upon the borough council. The Lighting (Restrictions) Order, 1939, had no bearing on the case, except that it must be taken into consideration in deciding the degree of care imposed upon a borough council in the present war-time circumstances when a bollard erected by them is unlighted. To the extent that Cassels, J., in *Wodehouse* v. *Levy, supra*, based his decision on the view that s. 130 of the 1855 Act imposed an absolute obligation upon the borough council, his decision could not be supported.

MACKINNON, L.J., expressed agreement with the last statement.

Appeal dismissed, with costs.

COUNSEL: *Gilbert J. Paull*, K.C., and *Montague Berryman*; *S. R. Edgedale.*

SOLICITORS: *A. E. Wyeth & Co.*; *William Charles Crocker.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

In re Gordon; Lloyds Bank, Ltd. *v.* Lloyd.

Simonds, J. 9th July, 1940.

Friendly society—Member's widow receives capital payment and pension—Whether sums so paid form part of testator's estate.

The testator had, since 1888, when he paid his first subscription, been a member of the Society for the Benefit of the Widows of the Officers of the Royal Regiment of Artillery. Under the rules of the society his widow became entitled on his death to a cash payment and to a pension so long as she remained his widow. Rule 82 of the rules of the society provided: "The property and funds of the society, and generally all its personal estate, and also all its real estate (if any) though legally or actually vested in or being in the actual or legal custody, possession, dominion, power or control of the trustees, shall be administered, dealt with, and disposed of by or under the control and according to the order and direction of the committee and the general meetings, subject to and in accordance with the rules." The testator died in 1939 and this summons was taken out by his personal representatives asking whether the widow was entitled to keep the moneys receivable by her from the society in respect of the testator's payments to it, or whether she held them in trust for his personal representatives as part of his estate.

SIMONDS, J., said the answer to this question depended upon whether, on the true construction of the rules of the society, a trust had been established for the widow's benefit. If there was such a trust the decisions in *Cleaver* v. *Mutual Reserve Fund Life Association* [1892] 1 Q.B. 147; *In re Engelbach's Estate* [1924] 2 Ch. 348, and *In re Sinclair's Life Policy* [1938] Ch. 799, had no application. The rules showed that a trust had been established. Rule 82 was conclusive on this. Here there was a trust and the rights created for third parties could be enforced by the persons in whose favour they existed. The widow accordingly was entitled to the capital sum and to the annuity payable under the society's rules.

COUNSEL: *G. D. Johnston*; *C. D. Myles*; *Wilfrid Hunt*; *J. A. Reid.*

SOLICITORS: *Fladgate & Co.*; *Peacock & Goddard*; *Dawes & Sons*; *Ellis, Peirs & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Broadstairs Picture House, Ltd. *v.* Littman.

Bennett, J. 9th July, 1940.

Emergency legislation—Contract for sale—Payment of deposit—Action for specific performance by vendor—Purchaser fails to complete—Motion to rescind and to forfeit deposit—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1, *subs.* (1), (4).

In 1938 the plaintiff company by a written contract agreed to sell and the defendant to purchase certain land for £5,000. The defendant paid a deposit of £250 and took possession of the property in March, 1939. He failed to complete on the agreed date. He then paid a further deposit of £250 and completion was postponed until June, 1939. The defendant not having completed, the plaintiffs started an action for the specific performance of the contract. They obtained the usual order and the master appointed the 3rd May, 1940, as the day for payment of the purchase money and for conveyance to the defendant. The defendant failed to complete on that day. By this motion the plaintiffs asked for an order rescinding the contract and forfeiting the deposit and also that the defendant should deliver up vacant possession of the property. The defendant contended that the case came within s. 1 (1) of the Courts (Emergency Powers) Act, 1939, alleging that the plaintiffs were seeking "to proceed to execution on, or otherwise to the enforcement of, any judgment or order of the Court . . . for the payment or recovery of a sum of money."

BENNETT, J., said, but for the Courts (Emergency Powers) Act, 1939, the order which the plaintiffs sought on this motion would be made as a matter of course. As a result of the action for specific performance, the plaintiffs had deprived themselves of their right to forfeit the deposit. They continued to be bound by the contract after the decree had been made. The ground on which the court would give leave to forfeit the deposit was that the defendant, in failing to perform the contract which he had been ordered to perform, was in contempt of court. The plaintiffs were not seeking to enforce any judgment or order for the payment of money. The case did not fall within s. 1 (1) of the Act of 1939. The plaintiffs were entitled to their order.

COUNSEL: *A. G. Coulson*, for the vendors; *Jopling*, for the purchaser.

SOLICITORS: *Lovell, Son & Pitfield*, for *Robinson & Allfree*, Ramsgate; *Wigram & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Wulfson *v.* Switzerland General Insurance Co., Ltd.

Atkinson, J. 7th May, 1940.

Insurance—Furniture uninsured while in transit and "in store"—Damaged by water while under tarpaulin in depository yard—Insurers liable.

Action on an insurance policy.

By a policy of insurance the plaintiff insured with the defendant company certain furniture and effects "against all risks of whatsoever nature whilst in transit door to door at and from Leipzig via Hamburg to London and for . . . three months (or held covered at a premium to be arranged) after arrival while in store" at a named depository. The plaintiff instructed a firm of packers in Leipzig to remove his furniture, and they had it packed in two lift vans and despatched to London. After reaching the docks in London the vans were left for eleven days in barges and then sent to the depository. They were sealed pending the attendance of a customs officer. When they were opened it was found that the contents of one of the vans had been badly damaged by water. There was no evidence that the damage had occurred during the transit, and the court found that it had probably occurred while the vans were at the depository. The defendants having denied liability under the policy, the plaintiff brought the present action claiming the amount of the damage to his property. The defendants contended that the damage had occurred when the goods were neither in transit nor in "store" within the meaning of the policy.

ATKINSON, J., said that the underwriters refused to pay under the policy because they found that while at the depository the vans had been placed not under cover but in an enclosed yard with tarpaulin sheets over them which left the sides partially unprotected. It appeared that so many vans were arriving in England at the material time with the possessions of refugees from the continent that it was quite impossible to put them all under cover, and the practice adopted in this case was the one usual at depositories. The defendants contended that, when left out in the open in that manner, the goods were not "in store"; and that only goods in a covered building could be said to be in store within the meaning of the policy. In his opinion the proper construction of the words "in store" was "while at the depository for the purposes of storage." There was no warranty in the policy as to the nature of the storage contemplated, and nothing to say that it was to be under cover or under any other particular conditions. In fact, the yard was locked up at night, and the goods were in store as contended by the plaintiff. If it should turn out that the depository had been negligent in caring for the goods, the underwriters would be subrogated to the rights of the plaintiff, but the plaintiff could recover under the policy. The underwriters then contended that the goods, even if they were in store, must be properly stored if there were to be a successful claim under the policy. In his opinion, they were in fact properly stored. The evidence was that that had become a recognised method of storing vans of that description; even, therefore, if the defence were right in contending that "in store" must be construed as "properly stored," the plaintiff must succeed.

COUNSEL: *Berryman*; *A. J. Hodgson.*

SOLICITORS: *Devonshire & Co.*; *Clyde & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hughes and Another *v.* Sheppard and Others; Morley and Others *v.* Same.

Singleton, J. 28th May, 1940.

Highway—White line being painted along middle of road—Newly painted line shown by cans containing flags—Whether cans a nuisance—Accident caused by driver's negligent collision with car—Highway authority not liable.

Action for damages for negligence and nuisance.

Servants of the Oxfordshire County Council acting as agents for the Minister of Transport were engaged in painting a white line down the middle of part of a road for which, by virtue of the Trunk Roads Act, 1936, the Minister of Transport was the highway authority. The men engaged on the work, before leaving it for the mid-day rest, placed tin cans, filled with sand, in which red flags were fixed at intervals, to indicate that the line was freshly painted. The driver of a motor car approaching the cans failed to see the first of them and collided with it,

the result being a collision with another car, several persons being injured. In actions brought by persons in both cars against the driver of the first car, the county council, and the Minister, it was contended on the plaintiffs' behalf and on that of the defendant driver that the council and the Minister were guilty of negligence in not indicating sufficiently clearly the presence in the road of the cans, and of creating a nuisance in the highway.

SINGLETON, J., having found that the defendant driver was negligent in failing to see the cans in time, said that the action was unusual in respect of the claim against the county council and the Minister. What was the position of the servants of a highway authority when painting a white line on a road? Counsel for the Minister referred in particular to s. 48 (1) of the Road Traffic Act, 1930, and argued that the painting of such a line was authorised by it, although not a traffic sign. He further argued that the white line was an "improvement" within the definition in s. 13 of the Trunk Roads Act, 1936. He (his lordship) thought that that was right. Such a line was clearly for the benefit of users of the road. In any case, the Minister must, as highway authority, have power to do what he thought reasonably necessary or advisable in the interest of public safety; and that included the painting of the white line. In *Evans* v. *Cross*, 82 SOL. J. 97; [1938] 1 K.B. 694, at p. 697, Lord Hewart, C.J., said that a white line was not a "traffic sign" within s. 48 (9) of the Road Traffic Act, 1930, but a "helpful indication" of the road which might best be followed. Here, at the time of the accident, the agents of the Minister were engaged in renewing such a "helpful indication," and they had thought it necessary in the public interest to indicate that the paint was wet. The Minister was entitled to do the work in the way in which he thought proper. It was argued for the defendant driver that the highway authority were not entitled to place cans in the road, and that to do so was to create a nuisance, and was, further, negligent. Nuisance had been defined as an act or omission, not warranted by law, which obstructed and caused inconvenience or damage to His Majesty's subjects in the exercise of rights common to all of them. It would, in his (his lordship's) opinion, be unreasonable for a highway authority to leave the newly painted line without any indication that the paint was wet. It might be that, in a technical sense, a nuisance was created by the placing of the cans in the road. There was, however, no actual nuisance. The highway authority had the right to paint the line, and therefore to do all that was reasonably necessary while doing the painting—that was, while the paint was still wet. They had done no more than was reasonably necessary here. Counsel for the Minister cited *Davies* v. *Mann* (1842), 10 M. & W 546, as an authority for the proposition that, if the can with which the defendant driver collided had had any value, the highway authority would have had a claim for damages against him in respect of it. It was argued that, even if the tins ought not to have been where they were, the driver's negligence was the proximate cause of the accident. If any blame in the matter attached to the second and third defendants, he (his lordship) would apportion a very small fraction of the damages against them As it was, however, he held only the first defendant liable, and all the plaintiffs succeeded in their claims against him

COUNSEL: *Milmo* (for *T. G. Roche*, on war service); *Flowers*, K.C., and *J. N. Watkins*; *Sellers*, K.C., and *M. Everett*; *J. W. Morris*, K.C., and *Valentine Holmes*.

SOLICITORS: *John T. Lewis & Woods*; *Gardiner & Co.*; *Pattinson and Brewer*; *The Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

Long (of Wraxall), Viscount the Right Honourable W. F. D. *v.* Long (of Wraxall), Viscountess the Right Honourable F. L.

The President. 18th June, 1940.

Divorce—Desertion—Subsequent deed of separation—Just cause—No mistake—The Matrimonial Causes Act, 1937, *s.* 2 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 57).

Husband's petition for dissolution of marriage on the ground of the respondent's alleged desertion of him without cause for a period of at least three years immediately preceding the presentation of the petition. The suit was undefended.

The marriage took place on 14th November, 1933, and during the first year or two quarrels occurred from time to time owing to the fact, as alleged by the petitioner, that his wife neglected him for social amusements in which, owing to his state of health, he could not or would not share. By 1935 it was obvious that the respondent was becoming less fond of the petitioner, and on 26th May, 1936, she left him, with a note to say that she had gone to her father's house, and did not intend to live with the petitioner any longer. The petitioner made a number of unsuccessful efforts to persuade her to return. On 1st July, 1937, a deed of separation was entered into by the parties under which it was agreed that they should thenceforth live separately from one another. The petitioner stated that he insisted to his then solicitor that it should be made clear on the face of the deed that the respondent had deserted him without cause, and that he instructed him to ensure that if his wife refused to return he should still have the right to sue her for desertion.

THE PRESIDENT said that he found as a fact that in May, 1936, the respondent deserted the petitioner without cause and was then determined to persist in doing so. With regard to the question whether the original desertion continued during the three years immediately preceding the presentation of the petition, the terms of the deed of separation had been faithfully carried out by both parties up to the date of the presentation of the petition. He had no doubt that the husband's main object in entering into the deed was to regularise the existing financial arrangements. He was unable to understand on what principle he was invited to ignore the deed and to hold that, notwithstanding its terms, the separation continued afterwards to have the quality of desertion by the wife. It was impossible on the recognised principles applying to mistake, whether unilateral or mutual, to hold that the petitioner was not bound by the deed. The deed continued to regulate the relations between the parties at the time of the presentation of the petition. There was no evidence that the wife had ceased to rely on it as just cause. The petition must be dismissed.

COUNSEL: *Noel Middleton*, K.C., and *Elliot Gorst*; *Melford Stevenson*.

SOLICITORS; *Kenneth Brown, Baker, Baker*; *Lewis & Lewis*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Rules and Orders.

COURTS (EMERGENCY POWERS).

THE COURTS (EMERGENCY POWERS) (EVACUATED AREAS) RULES, 1940, DATED AUGUST 3, 1940.
S.R. & O., 1940, No. 1421/L.21. Price 2d. net.

THE COUNTY COURT (EMERGENCY POWERS) (No. 2) RULES, 1940. DATED AUGUST 4, 1940.
S.R. & O., 1940, No. 1422/L.22. Price 1d. net.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL, *from the 16th September*, 1939, *to the 10th August*, 1940.)

PROGRESS OF BILLS.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 8th August:—
Appropriation.
Workmen's Compensation (Supplementary Allowances) (No. 2).

HOUSE OF LORDS.

Agriculture (Miscellaneous War Provisions) (No. 2) Bill [H.C.].
Read Second Time. [13th August.
Allied Forces Bill [H.L.].
Read Second Time. [13th August.
Consolidated Fund (Appropriation) Bill [H.C.].
Read Third Time. [8th August.

HOUSE OF COMMONS.

Finance (No. 2) Bill [H.C.].
Reported with Amendments. [13th August.
Isle of Man (Customs) Bill [H.C.].
Read Second Time. [15th August.
War Savings (Determination of Needs) Bill [H.C.].
Read First Time. [8th August.

STATUTORY RULES AND ORDERS.

E.P. 1417/S.61. **Agricultural Workers** (Scotland) (Holiday Period) Order, July 25.
No. 1400. **Air-Raid Precautions** (London) (Allocation of Duties) Order, July 30.
No. 1425. **Aliens** (High Frequency Apparatus Restriction) Order, June 25.
E.P. 1457. **Bread** (Restriction on Sales) Order, August 8.
E.P. 1449. **Control of Aluminium** (No. 5) Order, August 7.
E.P. 1452. **Control of Silicon** (No. 1) Order, August 7.
E.P. 1404. **Control of Silk** (No. 4) Order, August 1.
E.P. 1437. **Control of Timber** (No. 14) Order, August 7.
E.P. 1438. Control of Timber (No. 15) Order, August 7.
E.P. 1439. Control of Timber (No. 16) Order, August 7.
No. 1422/L.22. **County Court** (Emergency Powers) (No. 2) Rules, August 4.
No. 1421/L.21. **Courts** (Emergency Powers) (Evacuated Areas) Rules, August 3.
E.P. 1432. **Defence** (General) Regulations, 1939. Order in Council, August 7, 1940. Amending Regulation 55.
E.P. 1441. Defence (General) Regulations, 1939. Order in Council, August 7, 1940, adding Regulation 68B and amending Regulation 90.
E.P. 1442. Defence (Finance) Regulations, 1939. Order in Council, August 7, 1940, adding Regulation 7A.
E.P. 1443. Defence (Armed Forces) Regulations, 1939. Order in Council, August 7, 1940, adding Regulation 5.

E.P. 1444. Defence (War Zone Courts) Regulations, 1940. Order in Council, August 7.
E.P. 1445†S.64. Defence (War Zone Courts) (Scotland) Regulations, 1940, Order in Council, August 7.
No. 1423. **Export of Goods** (Control) (No. 30) Order, August 7.
E.P. 1416. **Food Rationing** Order, 1939. Amendment Order, August 3, 1940.
E.P. 1414. **Home Produced Eggs** (Maximum Prices) Order, 1940. Amendment Order, August 3.
E.P. 1440. **Home-Grown Rye** (Control and Maximum Prices) Order, August 7.
E.P. 1459. **Industrial Registration** Order, August 7.
E.P. 1415. **Margarine and Cooking Fats** (Requisition) Order, 1940, Amendment Order, August 3.
No. 1411. **National Service** (Armed Forces) (Isle of Man) Order in Council, July 31.
No. 1455. National Service (Armed Forces) Miscellaneous (Amendment) (No. 3) Regulations, August 8.
E.P. 1434. **Natural Asphalt Rock** (No. 1) Order, August 7.
E.P. 1458. **Raw Cocoa** (West African) (Maximum Prices) Order, August 9.
No. 1436. **Reprisals,** German and Italian Commerce Restriction, Order in Council, July 31, 1940, regulating a system of Passes for Approved Cargoes and Ships.
E.P. 1409. **Requisitioning of New Privately-owned Railway Wagons** (No. 4) Notice, August 1.
E.P. 1408. **Road Vehicles and Drivers** (Amendment) Order, July 31.
No. 1435/S.63. **Sheriff Court,** Scotland, Act of Sederunt, July 17, 1940, to Regulate the Recording of Memoranda under s. 23 or s. 24 of the Workmen's Compensation Act, 1925.
No. 1419. **Trading with the Enemy** (Insolvency) Order, August 4.
No. 1368. Trading with the Enemy (Specified Persons) (Amendment) (No. 9) Order, August 3.
No. 1426. **Unemployment Insurance** (Banking Industry Special Scheme) (Amendment) (No. 2) Order, July 30.
No. 1453. Unemployment Insurance (Insurance Industry Special Scheme) (Amendment) (No. 2) Order, July 30.
No. 1456. Unemployment Insurance (Emergency Powers) (Amendment) (No. 3) Regulations, August 8.
No. 1418. Unemployment Insurance (Subsidiary Employments) Order, July 30.
No. 1431/S.62. **War Charities** (Scotland) Regulations, August 3.
No. 1410. **War Risks** (Commodity Insurance) (No. 7) Order, August 3.
E.P. 1424. **Waste of Food** Order, August 5.
No. 1450. **Wheat** (Accounting Periods) No. 2 Order, August 7.

[E.P. indicates that the Order is made under Emergency Powers.]

Draft Statutory Rules and Orders.

Bankruptcy (Amendment) Rules, 1940.
Reserved Posts (Indian Civil Service) Rules, 1938. Amendment, 1940.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The O.B.E. (Military Division) has been awarded to the following solicitors for distinguished services in the field :—

Capt. Humphrey Ingoldby, The Lincolnshire Regt. Capt. Ingoldby is a member of the firm of Ingoldby & Sons, solicitors, Louth, and was admitted a solicitor in 1928.

Commander P. B. Martineau, R.N. Commander Martineau is a partner in the firm of Martineau & Reid, solicitors, of 2 Raymond Buildings, Gray's Inn, W.C.1, and was admitted a solicitor in 1925.

Capt. Basil Minor, Royal Corps of Signals (T.A.). Capt. Minor is employed in the Town Clerk's Department of the Darlington Corporation and was admitted a solicitor in 1936.

Capt. Philip James Woodhouse, The King's Shropshire Light Infantry (T.A.). Capt. Woodhouse is associated with Bulcraig & Davis, solicitors, of 12, Norfolk Street, Strand, W.C.2, and was admitted a solicitor in 1932.

The British Empire Medal (Civil) has been awarded to Gunlayer Allard, s.s. "City of Brussels." Mr. Allard is a partner in the firm of Gardner & Allard, solicitors, of Whitstable and Canterbury, and was admitted a solicitor in 1933.

According to a Supplement to the "London Gazette," issued on the 26th July, the following name has been brought to notice in recognition of distinguished services in the field up to June, 1940 :—

Major H. M. Everett, Royal Engineers, S.R. Major Everett is a partner in the firm of Everett & Everett, solicitors, of Pontypool, and was admitted a solicitor in 1933.

Notes.

The following Special Vacation Courts are being held at The Mayor's and City of London Court: Thursday, 22nd August; Thursday, 29th August.

A notice of the death, on Friday, 2nd August, of William Henry Lewis, managing clerk to Charles Russell & Co., after over forty years of loyal service, appeared in *The Times* recently.

In view of the wide demand for the Industrial Welfare Society's Correspondence Course in Industrial Law, the lectures comprised in the course have been brought up to date with recent legal changes. With the entry into factories of more persons on the labour and personnel management side, this course serves a useful purpose in providing them with the necessary knowledge of the legal principles affecting their work. One of the main advantages is that the course does not presuppose previous legal training on the part of those taking it and the various points are explained in non-legal and ordinary language. The course consists of six complete lectures on the following subjects: The Law of Master and Servant; Factories Act; Truck Acts; Trade Boards; Employers' Liability and Workmen's Compensation; National Insurance; Law relating to Works Welfare. The War Emergency Legislation on these subjects is also covered. Applications for joining the course or for further particulars should be made to the Secretary, Industrial Welfare Society, 14, Hobart Place, Westminster, S.W.1.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 29th Aug., 1940.

	Div. Months.	Middle Price 14 Aug. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108	3 14 1	3 6 11
Consols 2½%	JAJO	73⅛	3 8 0	—
War Loan 3% 1955–59	AO	100⅛	2 19 8	2 19 2
War Loan 3½% 1952 or after	JD	100⅛	3 10 1	3 9 9
Funding 4% Loan 1960–90	MN	111¼	3 11 9	3 4 2
Funding 3% Loan 1959–69	AO	97½	3 1 8	3 2 11
Funding 2½% Loan 1952–57	JD	97	2 16 8	2 19 8
Funding 2½% Loan 1956–61	AO	91	2 14 11	3 1 10
Victory 4% Loan Average life 21 years	MS	110⅛	3 12 7	3 6 3
Conversion 5% Loan 1944–64	MN	109⅛	4 11 6	2 4 4
Conversion 3½% Loan 1961 or after	AO	100⅛	3 9 8	3 9 4
Conversion 3% Loan 1948–53	MS	100⅛	2 19 6	2 17 7
Conversion 2½% Loan 1944–49	AO	99⅛	2 10 4	2 12 1
National Defence Loan 3% 1954–58	JJ	100⅛	2 19 8	2 19 1
Local Loans 3% Stock 1912 or after	JAJO	85⅛	3 10 2	—
Bank Stock	AO	325	3 13 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	85	3 10 7	—
India 4½% 1950–55	MN	107⅛	4 3 9	3 11 1
India 3½% 1931 or after	JAJO	91⅛	3 16 3	—
India 3% 1948 or after	JAJO	79⅛	3 15 8	—
Sudan 4½% 1939-73 Average life 27 years	FA	107	4 4 1	4 1 3
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 14 7
Tanganyika 4% Guaranteed 1951–71	FA	105	3 16 2	3 8 1
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	89	2 16 2	3 9 1
COLONIAL SECURITIES.				
•Australia (Commonwealth) 4% 1955–70	JJ	101	3 19 2	3 18 2
Australia (Commonwealth) 3½% 1964–74	JJ	88	3 13 10	3 17 10
Australia (Commonwealth) 3% 1955–58	AO	86⅛	3 9 4	4 1 6
•Canada 4% 1953–58	MS	109⅛	3 13 1	3 2 0
New South Wales 3½% 1930–50	JJ	94	3 14 6	4 5 8
New Zealand 3% 1945	AO	94⅛	3 3 6	4 7 10
Nigeria 4% 1963	AO	104	3 16 11	3 14 9
Queensland 3½% 1950–70	JJ	93	3 15 3	3 18 1
•South Africa 3½% 1953–73	JD	99⅛	3 10 4	3 10 6
Victoria 3½% 1929–49	AO	95	3 13 8	4 3 8
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79⅛	3 15 6	—
Croydon 3% 1940–60	AO	91⅛	3 5 7	3 12 1
Leeds 3½% 1958–62	JJ	94	3 9 2	3 13 1
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	92	3 16 1	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	79	3 15 11	—
•London County 3½% 1954–59	FA	100	3 10 0	3 10 0
Manchester 3% 1941 or after	FA	79⅛	3 15 6	—
Manchester 3% 1958–63	AO	91⅛	3 5 7	3 10 10
Metropolitan Consolidated 2½% 1920–49	MJSL	97	2 11 7	2 17 5
Met. Water Board 3% "A" 1963–2003	AO	82⅛	3 12 9	3 14 5
Do. do. 3% "B" 1934–2003	MS	83⅛	3 11 10	3 13 5
Do. do. 3% "E" 1953–73	JJ	88	3 8 2	3 12 7
Middlesex County Council 3% 1961–66	MS	91⅛	3 5 7	3 10 1
•Middlesex County Council 4½% 1950–70	MN	105⅛	4 5 4	3 15 4
Nottingham 3% Irredeemable	MN	80	3 15 0	—
Sheffield Corporation 3½% 1968	JJ	97⅛	3 11 10	3 12 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	102	3 18 5	—
Great Western Rly. 4½% Debenture	JJ	108⅛	4 2 11	—
Great Western Rly. 5% Debenture	JJ	112⅛	4 8 11	—
Great Western Rly. 5% Rent Charge	FA	109⅛	4 11 4	—
Great Western Rly. 5% Cons. Guaranteed	MA	105⅛	4 14 9	—
Great Western Rly. 5% Preference	MA	78	6 8 2	—

• Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.